

ORIGINAL

SOUTHERN DISTRICT COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK; BANKRUPTCY COURT

-----X INDEX NO.:

DAVE SHOSTACK, PLAINTIFF,

-AGAINST-

NOTICE  
OF MOTION

DEFENDANTS

GENERAL MOTORS HOLDING,  
GENERAL MOTORS CORPORATION  
AND AC DELCO

DEFENDANTS.

-----X  
PLEASE TAKE NOTICE, that upon the affidavit of Dave Shostack sworn to on the 9th day of DECEMBER 2010, a motion pursuant to CPLR will be made at the Southern District Bankruptcy Court of New York County located at 1 BOWLING GREEN, NEW YORK, NY on the 29<sup>TH</sup> day of DECEMBER 2010 or as soon thereafter as counsel can be heard for an order lifting Defendant Bankruptcy stay upon the ground that plaintiff has a new claim that was not discoverable at time Defendant filed Bankruptcy and that Defendant never named Plaintiff in their bankruptcy petition together with costs, disbursements, attorneys fees and for such other relief that this court feels is just and proper.

Plaintiff feels he has a meritorious cause of action.

Pursuant to CPLR 2214(b) answering affidavits, if any are required to be served upon the undersigned at least (7) days before the return date of this motion

DATED: DECEMBER 9, 2010

DAVE SHOSTACK  
4 SUTTONWOOD DR  
COMMACK, NY 11725  
(631) 864-2656

SOUTHERN DISTRICT COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK; BANKRUPTCY COURT

-----X INDEX NO.:

DAVE SHOSTACK, PLAINTIFF,

-AGAINST-

AFFIDAVIT IN  
SUPPORT OF NOTICE  
OF MOTION

GENERAL MOTORS HOLDING,  
GENERAL MOTORS CORPORATION  
AND AC DELCO

DEFENDANTS.

-----X

DAVE SHOSTACK sworn and deposes and says:

1. I am the Plaintiff in this matter and reside at 4 Suttonwood Dr. Commack, N.Y. 11725
2. That this matter involves an action to recover damages as a result of a defective transmission and other miscellaneous items manufactured by Defendants.
3. That Plaintiff currently has an action pending before the Second District Court, Civil Part, located at 33 East Hoffman, Lindenhurst, NY 11757
4. That following Plaintiff commencing his action in State Civil Court Plaintiff received notification from Defendant bankruptcy attorney that the matter between Plaintiff and Defendant would be stayed.
5. That Defendant did not name Plaintiff in the bankruptcy.
6. That Plaintiff feels he has a meritorious cause of action since Defendant has known about the transmission problems with the 2004 Chevy Malibu for several years prior to Plaintiff owning one yet they refused to cover the repairs on Plaintiff vehicle.
7. That Plaintiff feels he will be successful at lifting the bankruptcy stay since Plaintiff claim is a new claim since Plaintiff did not discover the transmission problem until October 2010 which was several months after the bankruptcy filing.
8. That on April 16, 2010 Plaintiff spoke with Ray (GM Customer Relations Specialist at ext 13015, Detroit, MI) at (800) 222-1030 who told Plaintiff that on May 12, 2009 Plaintiff called and spoke with (DJ, Manilla Phillipines) and reported a problem with the rotors and the seat handle on his 2004 Chevy Malibu

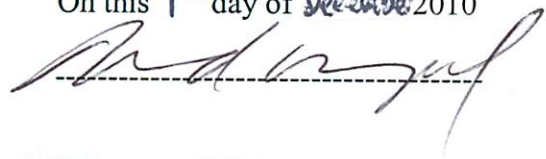
Classic and that on September 16, 2009 Plaintiff called GM Customer Service and spoke with (Fancy at ext 11043, Texas) and reported a problem with the rotors and calipers and that on Sept 24, 2009 Plaintiff called Customer Service and again spoke with (Fancy at ext 11043, Texas) and reported a problem with the right front axle leaking and problems with the brakes and On September 28, 2009 General Motors Customer Service (Fancy, ext 11043, Texas) called Atlantic Chevy to set up diagnosis on Plaintiff vehicle. After September 28, 2009 District Specialist known as Zeke took over Plaintiff case. On Oct 14, 2009 Plaintiff took his vehicle to Atlantic Chevy for multi-point inspection and wheel alignment. At time of inspection the following problems were found left front hub loose, right front axle leaking. Upon further inspection at another shop it was found that the hub was not loose but the right axle was leaking transmission fluid.

9. That since Plaintiff did not have a transmission problem at the time of the bankruptcy (June 2010, Bankruptcy filing date) he could not possibly be expected to commence an action for a claim for damages.
10. That in addition Defendant had a responsibility to name Plaintiff in the bankruptcy at the time of filing and failed to do so.
11. Defendant could have named Plaintiff in the bankruptcy considering Plaintiff in June 2010 mentioned defective brakes to Defendant customer service.
12. That therefore Plaintiff claims would be exempt from the bankruptcy filing.

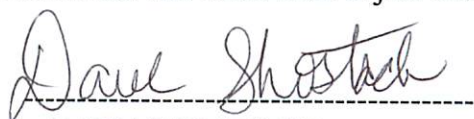
Wherefore Plaintiff seeks an order lifting the bankruptcy stay together with costs, disbursements and attorneys fees and any other relief that this court feels is just and proper

Sworn to:

On this 9<sup>th</sup> day of ~~December~~ 2010



HOWARD E. KNISPEL  
NOTARY PUBLIC STATE NY  
NO. 02KN6020498  
QUALIFIED SUFFOLK CTY.  
COMM. EXPIRES 3-01-11



DAVE SHOSTACK  
4 SUTTONWOOD DR.  
COMMACK, NY 11725  
(631) 864-2656



CVCS248694

CVCS248694



## ATLANTIC CHEVROLET CADILLAC

1356 Sunrise Highway  
BAYSHORE, NY 11706  
(631) 665-0002



08011CVCS248694 NYS R/S NUMBER 7080197

04 - 6 5 3 7 6 0

216125

JACK IMPERATO

2333

W448

10/10/09

CVCS248694

DAVID SHOSTACK  
4 SUTTONWOOD DR  
COMMACK, NY 11725-5614

99.00

25,298 /

04/CHEVROLET/CLASSIC/4DR SDN LS

1 G 1 N D 5 2 F X 4 M 6 5 3 7 6 0

10/10/09

631-864-2627

666-4492

MO: 25298

LABOR & PARTS  
J# 1 01CVZ99P

MULTI POINT INSP

TECH(S):2332

INTERNAL

PERFORM MULTI POINT INSPECTION

FREE COUPON

C/S LEAK BY RIGHT FRONT TIRE. LEFT FRONT SEEMS WET BY

WHEEL WELL

FOUND LEFT FRONT CALIPER FREEZING. HOSE & HUB LOOSE

STABILIZER LINKS & BUSHINGS FRONT, TRANNY PAN LEAKING

RIGHT FRONT AXLE SEAL LEAKING

DECLINED REPAIR

JOB # 1 TOTAL LABOR & PARTS

0.00

J# 2 14CVZ-ALIGN

ALIGN FRONT END

TECH(S):2332

INTERNAL

PERFORM FREE ALIGNMENT AS PER COUPON

COMPLETED

JOB # 2 TOTAL LABOR & PARTS

0.00

TOTALS

\* NEXT RECOMMENDED SERVICE:

\* 01/09/2010 / 150 MI 01CVZ-LOF

LUBE OIL AND FILTER

On behalf of all of us at Atlantic Chevrolet/Cadillac, we  
would like to THANK YOU for your continued patronage

In an ever increasing need to reduce paper consumption, we  
are asking that you provide us with your email address so we  
may contact you regarding upcoming factory recalls, service  
specials and/or an effort to receive your overall  
satisfaction input regarding our Service Department.  
WE DO NOT SHARE THIS INFORMATION WITH ANY OUTSIDE SOURCES.

Email Address:.....  
With your help, we can look forward to a greener future!!

YOUR SATISFACTION IS OUR TOP PRIORITY!

CUSTOMER SIGNATURE

TOTAL LABOR.... 0.00  
TOTAL PARTS.... 0.00  
TOTAL SUBLET... 0.00  
TOTAL G.O.G.... 0.00  
TOTAL MISC CHG. 0.00  
TOTAL MISC DISC 0.00  
TOTAL TAX..... 0.00

TOTAL INVOICE \$ 0.00

ANY WARRANTIES ON THE PRODUCT SOLD HEREBY  
ARE THOSE MADE BY THE MANUFACTURER. THE  
SELLER HEREBY EXPRESSLY DISCLAIMS ALL WAR-  
RANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING  
ANY IMPLIED WARRANTY OF MERCHANTABILITY OR  
FITNESS FOR A PARTICULAR PURPOSE, AND NEITHER  
ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO  
ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH  
THE SALE OF SAID PRODUCTS.

GENERAL MOTORS PARTS COVERED AGAINST DE-  
FACTS FOR 12 MONTHS OR 12,000 MILES.

☐ NO GUARANTEE ON WORK  
PERFORMED

☐ 30 DAYS OR 1,000 MILES WHICH-

EVER OCCURS FIRST

☐ 90 DAYS OR 4,000 MILES WHICH-

EVER OCCURS FIRST

☐ 12 MONTHS OR 12,000 MILES

WHICHEVER OCCURS FIRST

ALL PARTS NEW UNLESS

OTHERWISE NOTED.

NYS R/S NUMBER 7080197

☐ CASH ☐ CHECK ☐ MC ☐ VISA

☐ AM. EX. ☐ DISCOVER

CUSTOMER ACKNOWLEDGES  
REC. OF COPY X

Thank you for this opportunity to  
serve you. It is our aim to perform  
all the repairs requested on this  
repair order to your complete  
satisfaction. If our service was  
satisfactory tell your friends, if  
not, please tell us immediately.

THANK YOU

# AUTOFUSION

Estimate

334 W. JERICHO TPKE

HUNTINGTON, NY 11743

Shop Phone: (631) 351-5755

Fax: (631) 351-5753

Email: TRAN3726@AOL.COM

Web Address: WWW.AUTOFUSIONNY.COM

391

Estimate Ref #391

Date Printed: 10/21/2009

Printed Time: 4:56 pm

DMV# 7106666

Hat/Ref:

AUTOFUSION

Time Promised:

SHOSTACK, DAVE

2004 CHEVROLET MALIBU CLASSIC L4 2.2L 2198CC 134CID FI GAS N F L61

VIN: 1G1ND52FX411653760

License: ETJ2358

Mileage In: 25,811

Date Written: 10/21/2009

Home:

Work:

Unit #: 4T45E

Mileage Out: 25,812

Written By: DENNIS LICATA

Cell:

DOM: 03/04

Save Old Parts: No

Job Name	Description	Technician	Qty	List	Extended
Job #1	MAINTENANCE				
Sublet	Work Requested - MAINTENANCE		1.00	2,072.37	2,072.37
	Work Performed - TRANSAXLE ASSEMBLY				
Labor RATE 1	Work Requested - MAINTENANCE		6.00	80.00	480.00
	Work Performed - LABOR FOR REMOVING AND REINSTALLING TRANSAXLE				
Sublet	Work Requested - MAINTENANCE		10.00	3.75	37.50
	Work Performed - TRANSMISSION FLUID				
				Job Total:	2,589.87

Payment Date	Type	Method	Amount
Payment Totals:			

Parts: \$0.00

Labor: \$480.00

Sublet: \$2,109.87

Misc: \$0.00

Hazmat: \$0.00

Supplies: \$0.00

Tax: \$223.38

Invoice Total: \$2,813.25

THANK YOU

I hereby authorize the above repair work to be done along with the necessary material and hereby grant you and/or your employees permission to operate the car or truck herein described on streets, highways or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on above car or truck to secure the amount of repairs thereto.

Authorized By \_\_\_\_\_

Date \_\_\_\_\_

Time \_\_\_\_\_

Pg 6 of 7

No. 101003  
AAMCO POWER

MGR LAST		FIRST		DATE	
SHOSTACK		DAVE		10/23/09 11:32	
CITY		STATE/PROV		ZIP CODE	HOME PHONE
WOOD		COMMACK		NY 11725	25888 4T45E
YEAR	MODEL	COLOR	VEHICLE IDENTIFICATION NUMBER (VIN)		BUSINESS PHONE
2004	CHEVROLET MALIBU	BLUE	1G1ND52FX4M653760		ETJ235B
WARRANTY CLAIM INFORMATION		PROD DATE		ENGINE SIZE	CELL PHONE
				2.2L	631 884-2858
HAT NUMBER		EMAIL ADDRESS			
749					

# 44200

**Smith Haven Car Care Inc.**

2575 Middle Country Road

Centereach, NY 11720

631-467-0023

REG. #

7099325

**AAMCO COMPLETE CAR CARE**

PARTS \$24.96 LABOR \$248.288 SUBTOTAL \$271.258

1 R / AXLE SEAL

12.48

1 L / AXLE SEAL

12.48

2.6 LABOR TO REPLACE

248.30

**TRANSMISSION**

CCC

PARTS: \$ LABOR: \$ SUBTOTAL: \$ PARTS: \$24.96 LABOR: \$248.288 SUBTOTAL: \$271.258

Data does not reflect shop supply charges that may represent both cost and profits to this service center.

PARTS	24.96
LABOR	248.30
<b>SUBTOTAL</b>	<b>271.26</b>





## Service Bulletin

File In Section: 07 - Transmission/Transaxle

Bulletin No.: 08-07-30-009

Date: March, 2008

### TECHNICAL

**Subject:** HYDRA-MATIC® Front Wheel Drive 4T80-E (MH1) Right Front Axle Seal Leak, Transmission Slips in Gear (Replace Third Clutch Housing with Revised Service Part)

**Models:** 2001-2008 GM Passenger Cars  
with HYDRA-MATIC® Front Wheel Drive 4T80-E Automatic Transmission  
(RPO - MH1)

#### Condition

Some customers may comment on a transmission oil leak and/or that the transmission slips in gear.

#### Cause

An oil leak may be caused by bushing wear in the third clutch housing, causing excessive fluid build-up at axle seal.

#### Correction

**Important:** DO NOT replace the transmission for above concerns.

Replace the third clutch housing with service P/N 8682114, which has revised bushing material to extend life and reduce right front axle seal leaks. Refer to Automatic/Transaxle - 4T80-E Transmission Off-Vehicle Repair Instructions for the replacement of the third clutch housing in SI.

#### Parts Information

Part Number	Description	Qty
8682114	Housing, Third Clutch	1

#### Warranty Information

For vehicles repaired under warranty, use:

Labor Operation	Description	Labor Time
K7532	Clutch, Third - R&R or Replace	Use Published Labor Operation Time

GM bulletins are intended for use by professional technicians, NOT a "do-it-yourselfer". They are written to inform these technicians of conditions that may occur on some vehicles, or to provide information that could assist in the proper service of a vehicle. Properly trained technicians have the equipment, tools, safety instructions, and know-how to do a job properly and safely. If a condition is described, DO NOT assume that the bulletin applies to your vehicle, or that your vehicle will have that condition. See your GM dealer for information on whether your vehicle may benefit from the information.



WE SUPPORT VOLUNTARY  
TECHNICIAN  
CERTIFICATION